APPEAL NO. 000486

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on February 9, 2000. With regard to the issues before her, the hearing officer determined that the appellant (claimant) sustained a compensable right leg contusion injury on _____ (all dates are 1999 unless otherwise noted); and that the claimant did not have disability resulting from that injury. The claimant appeals, contending that she has a medial meniscus tear (and other injuries) to her right knee and that she has had disability from October 15th to the date of the CCH. Claimant requests that we reverse the hearing officer's decision and render a decision in her favor. The respondent (self-insured) responds, urging affirmance.

DECISION

Affirmed.

Much of this case turns on the credibility of the claimant and the interpretation placed on various records and statements. Claimant was employed as a custodian in one of the self-insured's schools. Claimant testified that on _____, she caught her right leg between a buffer and a bench and that the buffer hit her right knee and leg. Claimant said that after resting a few minutes, she reported the injury to her supervisor, Ms. L. Claimant demonstrated for the hearing officer how her leg was injured. Claimant testified that although her leg continued to hurt, and that she continued to complain to Ms. L "every day," claimant continued working her regular job until around midnight on _____, when she went to the hospital emergency room (ER).

The handwritten ER note states "® knee pain onset yesterday, denies trauma or fall [symbol for "causing"] injury to knee [symbol for "over"] month ago [symbol for "with"] buffer @ wk." Claimant explained that onset meant that was when the pain became so severe she could no longer stand it. X-rays were negative. Claimant was prescribed anti-inflammatory medication, released and told to see her regular doctor. Claimant subsequently saw Dr. N, at clinic, on October 20th. Clinic handwritten notes state "pt got her ® leg caught between buffer machine and a bench while buffing the floors (_____)." The clinic assessment was "It is my opinion that this is not to this injury as she had no problems for 2 months. Possibly new injury vs inflammation–possibly vascular ® lower leg pain." Dr. N, in a report dated January 24, 2000, wrote:

> As you are aware, I examined [claimant] on October 20, 1999. She said that she had sudden onset of pain and swelling in her right leg on _____ for which she went to the [ER]. She related this to an injury she sustained on _____ when she got her leg caught between a buffer machine and a bench. She stated that at that time she had a little swelling and was slightly sore but evidently never got medical attention and this sent [sic] away. She then said she had no problems with this until October 14th. On examination

> her left knee was normal. She had tenderness anterior and medial just below the knee. There was no redness and no bruising noted. She did have some mild swelling in the area and also had some small varicose veins there. She had full motion of the knee.
>
> Based upon the examination and the history given by the patient it was my conclusion that this acute episode of pain and swelling on October 14th was not related to the injury of _____. According to her history she denied having problems with the leg for about two months and suddenly had pain and swelling in the area on October 14th. It is more likely that she had some other acute injury that day (perhaps a strain) or an episode of inflammation of one of her varicosities. It does not seem medically reasonable to relate this pain to the August injury since she had no ongoing problems for almost two months. I referred her to her family doctor as this did not appear to be a work related problem.

Claimant subsequently sought treatment from Dr. V on October 22nd. X-rays of that date were interpreted as showing a joint dislocation between the tibia and femur with subluxation (the prior October 20th ER x-rays had been interpreted as normal). Claimant was referred for an MRI which was performed on November 2nd. The MRI had an impression of "significant degenerative changes . . . within the posterior horn of the medial meniscus, where a horizontal, oblique, linear interface is . . . suggestive of a subtle, posterior horn of the medial meniscus tear." No follow-up testing was performed to confirm or rule out the suggestion of a meniscus tear because claimant said the self-insured refused to authorize further testing. Dr. V continued to perform chiropractic therapy for a knee strain. Dr. V, in a "S.O.A.P." note of February 7, 2000, indicated that he was referring claimant to another doctor for a second opinion.

Testimony brought out that Ms. L, claimant's supervisor, had also sustained a leg or knee injury using the buffer about a week or two prior to claimant going to the ER, had filed a workers' compensation claim, and was treating with and had suggested Dr. V to claimant. The hearing officer found:

> Claimant's evidence is sufficient to prove by a preponderance of the evidence that she sustained a contusion to her right leg immediately below the patella (kneecap) in the course and scope of her employment on _____. Claimant's evidence is insufficient to support a finding that she sustained an injury to her right knee–specifically a torn medial meniscus in the course and scope of her employment on _____. Claimant's evidence was insufficient to support a finding of disability from the contusion from October 15, 1999 to the date of the hearing.

Claimant's appeal emphasized her interpretation of the MRI, contended that the second opinion doctor had recommended surgery, that surgery would not be required for only a

contusion, and that claimant had, in effect, trivialized the severity of her injury from _____ to October 14th, when the pain became so bad she could no longer stand it. Claimant argued that all the doctors had either taken her off duty or released her to light duty and that the self-insured had no light duty available.

The claimant in a workers' compensation case has the burden to prove by a preponderance of the evidence that he sustained a compensable injury in the course and scope of employment. Johnson v. Employers Reinsurance Corporation, 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). The hearing officer is the sole judge of the relevance and materiality of the evidence and of its weight and credibility. Section 410.165. The hearing officer resolves conflicts and inconsistencies in the medical evidence and judges the weight to be given to expert medical testimony. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). To this end, the hearing officer as fact finder may believe all, part, or none of the testimony of any witness. The testimony of a claimant as an interested party raises only an issue of fact for the hearing officer to resolve. National Union Fire Insurance Company of Pittsburgh, Pennsylvania v. Soto, 819 S.W.2d 619, 620 (Tex. App.-El Paso 1991, writ denied). When reviewing a hearing officer's decision we will reverse such decision only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986). Injury may be proven by the testimony of the claimant alone and objective medical evidence is not required to establish that particular conduct resulted in the claimed injury, except in those cases where the subject is so technical in nature that a fact finder lacks the liability from common knowledge to find a causal basis.

In this case, the hearing officer was clearly bothered by the two-month gap between the injury on _____ and when claimant first sought medical treatment on October 14th. The hearing officer also may have considered the coincidence that the supervisor suffered a similar injury using the buffer shortly before claimant began to seek medical treatment. As noted above, the interpretation of the medical evidence was solely a factual determination within the province of the hearing officer to resolve.

Upon review of the record submitted, we find no reversible error and we will not disturb the hearing officer's determinations unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or unjust. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951). We do not so find and, consequently, the decision and order of the hearing officer are affirmed.

Thomas A. Knapp
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Alan C. Ernst
Appeals Judge